

**STATE OF ILLINOIS**

**ILLINOIS COMMERCE COMMISSION**

Illinois Commerce Commission	)	
on its own motion	)	
	)	Docket No. 01-0705
Northern Illinois Gas Company d/b/a NICOR	)	
Gas Company	)	
	)	
Reconciliation of Revenues collected under	)	
Gas Adjustment Charges with Actual Costs	)	
prudently incurred	)	
	)	
Illinois Commerce Commission	)	
on its own motion	)	
	)	Docket No. 02-0067
Northern Illinois Gas Company d/b/a NICOR	)	
Gas Company	)	
	)	
Proceeding to review Rider 4, Gas Cost, pursuant	)	
to Section 9-244(c) of the Public Utilities Act	)	
	)	
Illinois Commerce Commission	)	
on its own motion	)	
	)	Docket No. 02-0725
Northern Illinois Gas Company d/b/a NICOR	)	
Gas Company	)	
	)	
Reconciliation of Revenues collected under	)	
Gas Adjustment Charges with Actual Costs	)	
prudently incurred	)	

**VERIFIED MOTION TO REQUIRE PRE-FILED TESTIMONY  
TO BE SUBMITTED UNDER SEAL**

Northern Illinois Gas Company d/b/a Nicor Gas Company (“Nicor Gas” or the “Company”) hereby respectfully moves the Administrative Law Judges (the “ALJs”), pursuant to 83 Ill. Admin. Code §§ 200. 190 and 200.430, for a ruling requiring certain pre- filed testimony of Staff and the Intervenors in this proceeding to be submitted to the Clerk of the Commission under seal. In support of this Motion, Nicor Gas states as follows:

1. At Staff's request, Nicor Gas agreed to and facilitated numerous discovery depositions in this proceeding. All active parties participated in the depositions, including Staff and Citizens Utility Board, the Cook County State's Attorney's Office, and the Illinois Attorney General's Office.<sup>1</sup> These discovery depositions, and the transcripts of them, were designated as confidential information by the Company.

2. Staff's and the Intervenor's pre-filed direct testimony is due on November 21, 2003. These parties have stated that they do not intend to offer factual evidence through their witnesses' pre-filed testimony but rather only expert opinions. (*See, e.g.*, Mot. Hr'g Tr., Oct. 29, 2003). Nonetheless, certain parties have stated that they intend to include verbatim excerpts from the deposition transcripts (as factual evidence) within their witnesses' pre-filed expert testimony and/or to attach portions of the transcripts as evidentiary exhibits.

3. Nicor Gas respectfully submits that admission of verbatim hearsay in the form of the discovery deposition transcripts through Staff's and the Intervenor's expert witnesses would be legally improper and highly prejudicial. The Company submits that the law of evidence differentiates sharply between the use of inadmissible hearsay—*i.e.*, information obtained in a discovery deposition—as the basis for expert testimony, on the one hand, and the literal introduction of hearsay statements as evidence in a party's case.<sup>2</sup> Consequently, Nicor Gas believes that the submission of pre-filed testimony by Staff or the Intervenor that seeks to admit

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<sup>1</sup> Citizens Utility Board, the Cook County State's Attorney's Office, and the Illinois Attorney General's Office, collectively, are referred to herein as the "Intervenor's."

<sup>2</sup> *See* 83 Ill. Admin. Code § 200.610(b); 5 ILCS 100/10-40(a); Fed. R. Evid. 703; *In re Commonwealth Edison Co.*, Docket No. 90-0038, 1990 WL 508139, at \*18 (Ill. Comm. Comm'n December 12, 1990); *In re Matter of Tariff Revision*, Docket No. U-01-108, 2002 Alas. PUC LEXIS 469, at \* 6-11 (Alaska Pub. Util. Comm'n Sept. 24, 2002); *Jackson v. Bd. of Review of Dep't of Labor*, 105 Ill. 2d 501, 504, 475 N.E.2d 879, 883 (1985); *Grand Liquor Co., Inc. v. Dep't of Revenue*, 67 Ill. 2d 195, 199, 367 N.E.2d 1238, 1240 (1977); *Novick v. Dep't of Finance*, 373 Ill. 342, 344, 26 N.E.2d 130, 131 (1940).

the discovery deposition transcripts through their expert witnesses, whether selectively or in their entirety, raises grave concerns for the integrity of the process and the record in this proceeding.

4. Nicor Gas notes that the ALJs have made no ruling as to the propriety or impropriety of the verbatim use of the discovery deposition transcripts in Staff's and the Intervenors' expert witnesses' pre-filed testimony. While this Motion presents a brief summary of the Company's position on this question for purposes of context, it does not seek to have the ALJs rule on this question at this time.

5. The discovery depositions and the resulting transcripts have been designated as confidential information. (*See* ¶ 1 *supra*). Therefore, the discovery deposition transcripts and any information derived from them properly should be filed under seal, if included in the pre-filed testimony of Staff and the Intervenors. Accordingly, to avoid any possible misunderstanding and to protect against the material prejudice posed to the Company by the literal use of the deposition transcripts in Staff's and the Intervenors' pre-filed expert testimony (which the Company submits is prohibited under existing law), Nicor Gas is seeking a ruling from the ALJs at this time to protect the confidential status of the discovery deposition transcripts.

6. In this respect, the ALJs may determine that the most appropriate course would be for Staff and the Intervenors to submit under seal in its entirety any witness's pre-filed testimony that incorporates verbatim excerpts from the discovery deposition transcripts or information derived from the discovery depositions, whether in Q&A format or as evidentiary attachments. Alternatively, the ALJs may determine that such testimony should be filed in public and proprietary versions, with verbatim excerpts from the transcripts and information derived from

the discovery depositions redacted from the proprietary version. Nicor Gas defers to the ALJs discretion on the precise procedure to be followed.

WHEREFORE, for all these reasons, Nicor Gas requests that the ALJs grant this Motion and issue a ruling to protect the confidential status of the discovery deposition transcripts and information derived from them, in the manner described above, and provide such other relief as is just and appropriate. Nicor Gas seeks expedited resolution of this Motion with a ruling to issue before Staff and the Intervenors submit their witnesses' pre-filed testimony on November 21, 2003.

Dated: November 14, 2003

Respectfully submitted,

NORTHERN ILLINOIS GAS COMPANY  
D/BA/ NICOR GAS COMPANY

By: \_\_\_\_\_  
One of its attorneys

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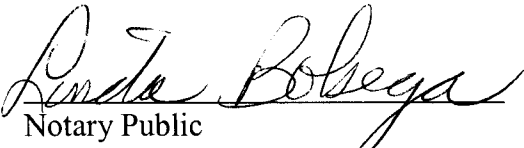
**VERIFICATION**

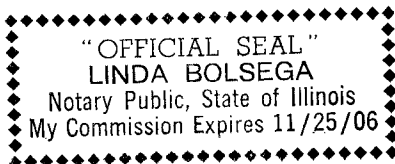
I, Thomas A. Andreoli, being first duly sworn, hereby state that I am an attorney for Northern Illinois Gas Company d/b/a Nicor Gas Company ("Nicor"), that I am authorized to make this Verification on its behalf, that I have read the foregoing Verified Motion to Require Pre-Filed Testimony to be Submitted under Seal in Consol. Docket Nos. 01-0705, 02-0067 and 02-0725, that I have knowledge of the facts stated therein, and that the same are true and correct to the best of my knowledge, information, and belief.

  
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Thomas A. Andreoli

ATTORNEY FOR NORTHERN ILLINOIS GAS  
COMPANY D/B/A NICOR GAS COMPANY

Subscribed and sworn to before me  
this 14th day of November, 2003.

  
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Notary Public



**CERTIFICATE OF SERVICE**

I, Thomas A. Andreoli, hereby certify that I served a copy of Northern Illinois Gas Company d/b/a Nicor Gas Company's Verified Motion to Require Pre-Filed Testimony to be Submitted under Seal upon the service list in consolidated Docket Nos. 01-0705/02-0067/02-0725 by email on November 14, 2003.

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Thomas A. Andreoli